

48A C.J.S. Judges § 202

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VII. Compensation and Fees

B. Amount

2. Change in Amount During Term of Office

b. Restrictions Against Altering Compensation During Term

§ 202. What constitutes change

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges 0-22\(7\)](#)

While the Compensation Clause of the Federal Constitution, providing that judges' salaries shall not be diminished during their continuance in office, does not amount to a promise that the real salary received by federal judges will always be maintained, it does protect sitting judges both from direct reductions in their salary and from some indirect reductions.

The Compensation Clause of the Federal Constitution, providing that judges' salaries shall not be diminished during their continuance in office,¹ does not amount to a promise that the real salary received by federal judges will always be maintained.² Nevertheless, the Compensation Clause protects sitting judges both from direct reductions in their salary and from some indirect reductions.³ Where an indirect diminution occurs, such diminution must be the product of a demonstrable discriminatory attack upon the independence of the judiciary in order to violate the Constitution.⁴ So, indirect, nondiscriminatory diminishments of judicial compensation, those which do not amount to an assault upon the independence of the judiciary, fall outside of the protection of the Compensation Clause.⁵

A constitutional provision prohibiting the raising of salaries during a term of office must yield to the constitutional provision requiring the adequate maintenance of judges.⁶

Constitutional or statutory provisions prohibiting an increase or diminution of the salary of judges are not violated by statutes extending the terms of incumbent judges,⁷ by statutes abolishing a court originally created by the legislature,⁸ or by statutes providing a new formula for calculating the wages of judges.⁹

Where the salary or compensation has not been fixed at all at the time of the election or appointment, the constitutional inhibition against changing the salary during the term of office does not prevent its being fixed after the election or appointment¹⁰ or after the term begins.¹¹ However, when it is once so fixed, it cannot subsequently be changed.¹²

Allowance of extra compensation for additional services.

Extra compensation for additional services pertaining to judicial duties is an increase of the salary or compensation of the judge so as to come within the inhibition against increasing the salary or compensation during the term of office.¹³ However, extra compensation may be allowed notwithstanding the constitutional inhibition where the duty imposed is one which does not belong to the jurisdiction of the judge's court¹⁴ or where new duties which had no existence before and which increase the judge's labor and responsibility are imposed on the judge.¹⁵

Allowances of expenses; attachment or garnishment.

A provision for the payment of "expenses" rather than for "services" is not within the constitutional inhibition,¹⁶ although the amount of the expenses is fixed in a lump sum in advance of their being actually incurred,¹⁷ provided such amount is not so grossly excessive as to show on its face that it was not intended for expenses but was made with a purpose unlawfully to increase the compensation of the judge.¹⁸ An allowance of a flat sum per month for traveling expenses is void as an effort to increase the salary.¹⁹

A statute subjecting salaries due state, county, or municipal employees to attachment or garnishment does not violate a constitutional provision that salaries shall not be changed during the term of office.²⁰ Such constitutional provision does not preclude a creditor from attaching the salary of a judge.²¹

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Footnotes

1 U.S. Const. Art. III, § 1.

2 U.S.—[Atkins v. U. S.](#), 214 Ct. Cl. 186, 556 F.2d 1028 (1977) (disapproved of on other grounds by, [Consumer Energy Council of America v. Federal Energy Regulatory Commission](#), 673 F.2d 425 (D.C. Cir. 1982)).

3 U.S.—[U.S. v. Hatter](#), 532 U.S. 557, 121 S. Ct. 1782, 149 L. Ed. 2d 820 (2001); [McBryde v. U.S.](#), 299 F.3d 1357 (Fed. Cir. 2002).

4 U.S.—[McBryde v. U.S.](#), 299 F.3d 1357 (Fed. Cir. 2002).

5 U.S.—[Atkins v. U. S.](#), 214 Ct. Cl. 186, 556 F.2d 1028 (1977) (disapproved of on other grounds by, [Consumer Energy Council of America v. Federal Energy Regulatory Commission](#), 673 F.2d 425 (D.C. Cir. 1982)).

Penalty for noncompliance with statute

A provision, in an ethics in government act for a penalty for noncompliance with the financial disclosure provisions of the act, was not unconstitutional as diminishing the compensation of federal judges in violation of the judiciary article of the Constitution.

U.S.—[Duplantier v. U.S.](#), 606 F.2d 654 (5th Cir. 1979).

6 Ky.—[Wright v. Oates](#), 314 S.W.2d 952 (Ky. 1958).

7 Mich.—[Doyle v. Election Com'n of City of Detroit](#), 261 Mich. 546, 246 N.W. 220 (1933).

8 Ohio—[Geisinger v. Cook](#), 52 Ohio St. 2d 51, 6 Ohio Op. 3d 191, 369 N.E.2d 477 (1977).

Or.—[Higgins v. Hood River County](#), 245 Or. 135, 420 P.2d 634 (1966).

Pa.—[Glancey v. Casey](#), 447 Pa. 77, 288 A.2d 812 (1972).

9 Colo.—[Alderton v. State](#), 17 P.3d 817 (Colo. App. 2000).

10 Ky.—[City of Olive Hill v. Craig](#), 267 Ky. 38, 101 S.W.2d 198 (1937).

11 Ky.—[Perkins v. Sims](#), 350 S.W.2d 715 (Ky. 1961).

Ohio—[Derhammer v. Board of County Com'rs of Medina County](#), 38 Ohio Op. 439, 53 Ohio L. Abs. 110, 83 N.E.2d 400 (C.P. 1948).

12 Ky.—[City of Olive Hill v. Craig](#), 267 Ky. 38, 101 S.W.2d 198 (1937).

13 Kan.—[Moore v. Nation](#), 80 Kan. 672, 103 P. 107 (1909).

W. Va.—[Harbert v. Harrison County Court](#), 129 W. Va. 54, 39 S.E.2d 177 (1946).

As to extra compensation, generally, see § 207.

14 Ky.—[Coleman v. Hurst](#), 226 Ky. 501, 11 S.W.2d 133 (1928).

Oklahoma—[Aubrey v. Huser](#), 1948 OK 268, 201 Okla. 60, 201 P.2d 249 (1948).

15 Ala.—[Marion County v. Middleton](#), 246 Ala. 464, 21 So. 2d 312 (1945).

N.J.—[Goldberger v. City of Perth Amboy](#), 16 N.J. Misc. 84, 197 A. 267 (Sup. Ct. 1938).

16 Ill.—[Cummings v. Smith](#), 368 Ill. 94, 13 N.E.2d 69 (1937).

Ky.—[Tierney v. Van Arsdale](#), 332 S.W.2d 546 (Ky. 1960).

Mich.—[Holmes v. State Officers Compensation Commission](#), 57 Mich. App. 255, 226 N.W.2d 90 (1974).

17 U.S.—[Kavanagh v. Brown](#), 206 F. Supp. 479 (E.D. Mich. 1962), judgment aff'd, 371 U.S. 35, 83 S. Ct. 143, 9 L. Ed. 2d 112 (1962).

Ky.—[Tierney v. Van Arsdale](#), 332 S.W.2d 546 (Ky. 1960).

18 Ill.—[Cummings v. Smith](#), 368 Ill. 94, 13 N.E.2d 69 (1937).

Ky.—[Manning v. Sims](#), 308 Ky. 587, 213 S.W.2d 577, 5 A.L.R.2d 1154 (Ky. 1948).

19 Tenn.—[State ex rel. Barker v. Harmon](#), 882 S.W.2d 352 (Tenn. 1994).

20 Ky.—[Batesville Casket Co. v. Fields](#), 288 Ky. 104, 155 S.W.2d 743 (1941).

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